Thus my answers to all the four questions raised are against the appellant. As regards questions of fact I find nothing to justify interference as the findings of fact were clearly made by the trial court.

There appears at the end of the judgment of the learned President that counsel for the plaintiff "undertook to refund to defendant any sum outstanding after judgment had been satisfied." The respondent sought during argument to remove that part of the learned President's order on the grounds simply that the relief was never asked for in the statement of claim.

One of the underlying objectives in rules of procedure is to avoid unnecessary duplication of suits and/or proceedings. Therefore courts in every cause or matter pending before them should grant all such remedies as appear to be necessary and to which the party would appear entitled in respect of any legal or equitable claim so that the objective is achieved by having the controversy between the parties completely and finally determined.

True I find some of the provisions of the agreement peculiar. Although it is a sale agreement the title of the property remained throughout with the developer. Under clause 6.02 of P1 the plaintiff (respondent now) would not transfer the title to the appellant until after all payments have been made. Provisions under the miscellaneous part of P1 deal with late payments, interest charges, defaults and vacant possession and forfeiture of all moneys paid. But it is settled law that when a document containing contractual terms is signed, then in the absence of fraud or misrepresentation, the party signing it is bound by the terms. In this case the defendant had signed the agreement knowing fully well that it is a contract for purchase of the house and provisions of the agreement dealt substantially with the modes of payment. It is always implied that the court has the discretion to add to the reliefs prayed for any relief which in its opinion is fair and just and warranted by the circumstances of the case. It is also clear from the notes as well as from the grounds of decision of the learned President that there was an undertaking by counsel for the plaintiff then. I do not think I should interfere with an order consequent upon an undertaking made before another court the terms of which I am not fully familiar with. Furthermore, there is also no cross appeal against this part of the order of the learned President.

The appeal is therefore dismissed with costs and the order of the learned President is affirmed.

*Appeal dismissed.*

Solicitors: *Baharuddin, Bernatt, Tan & Ker; Mah Kok & Din.*

## PUBLIC PROSECUTOR v. ABANG ABDUL RAHMAN

**[A.Cr.J. (Tan Chiaw Thong J.) October 19, 1981]**
**[Sri Aman — Criminal Appeal No. SG. 1 of 1980]**

*Criminal Law and Procedure — Corruption — Acquittal by lower court — Prosecution witnesses not cross-examined — Failure of trial magistrate to state reasons for findings in judgment — Acquittal order set aside.*

The respondent was charged in the lower court under section 4(c) of the Prevention of Corruption Act. He was the Secretary of the Kalaka District Council, and had applied for leave and for free passages to visit Semenanjung Malaysia during his leave. Both were granted to the respondent. The prosecution alleged that he did not make use of the free passages granted because no air tickets had in fact been bought by him or on his behalf. Hence, in certifying the payment voucher (Ex. p. 6) that he had lost all the relevant air tickets issued to him at a cost of $1,264.00 he had knowingly used Ex. P. 6 with intent to deceive, his principal, the Kalaka District Council in that Ex. P. 6 contained false material particulars, namely that the said sum had been incurred by him and his family when they had not been so incurred.

The case for the defence was that the air tickets had been bought by the respondent through Chop Thong Hwa, a shop which sometimes obtained air tickets on behalf of others from Sin Hua Travel Agent, Sibu. While in the course of making preparations in Kuching to visit Kuala Lumpur with his family, the respondent received news that one of his children was ill and he had to rush back to his house during the course of which he lost the air tickets. Hence, in certifying this in Ex. P. 6 he was merely certifying a fact, and, the cost of the air tickets having been incurred by him and his family, he had not committed the offence charged against him. The learned trial magistrate acquitted the accused of the said charge. The prosecution appealed.

**Held,** allowing the appeal: (1) an appellate court can interfere with a finding based on inference; an appellate court before reaching its conclusions upon matters of fact, should and will always give proper weight and consideration to such matters as (a) the views of the trial judge as to the credibility of the witnesses; (b) the presumption of innocence in favour of the accused; (c) the right of the accused to the benefit of any doubt; and (d) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses;

(2) in the light of the conflicting evidence on material matters in the respective testimonies of PW5, PW6 and the respondent, the learned trial magistrate could not have been in a position to properly weigh the evidence of PW5 and PW6 against that of the respondent particularly on such material matters, as he seemed to have done. This material defect in the judgment of the lower court made it unsound and was sufficient to cast doubt on its correctness and reliability, and justified the setting aside of the order of acquittal of the lower court;

(3) a magistrate should discuss the evidence and the probabilities arising from the circumstances of the case. The reasons for his findings should be stated. The grounds should indicate that he had in fact applied his mind to the evidence produced in the case. In the present case the learned trial magistrate had not adequately done that in his judgment, rendering it defective.

*Cases referred to:-*

(1) *Wong Swee Chin* v. *Public Prosecutor* [1981] 1 M.L.J. 212.

(2) *Re Pichi Muthu* [1970] 2 M.L.J. 143.

(3) *Public Prosecutor* v. *Mohamed Isa bin Awang & Anor.* Kedah Criminal Trial No. 26 of 1978. *(unreported).*

(4) *Chua Beow Huat* v. *Public Prosecutor* [1970] 2 M.L.J. 29.

(5) *A.E.G. Carapiet* v. *A.Y. Derderian* A.I.R. 1961 Cal. 359.

(6) *Sheo Swarup* v. *King Emperor* A.I.R. 1934 P.C. 227.

(7) *Public Prosecutor* v. *Ku Lip See* [1981] 1 M.L.J. 258.
(8) *Lee Sang Cheah* v. *R.* [1946] M.L.J. 22.
(9) *Mat* v. *Public Prosecutor* [1963] M.L.J. 263.
(10) *Public Prosecutor* v. *Sharikat Perusahan Makanan Haiwan Berkerjasama* [1969] 2 M.L.J. 250.

MAGISTRATE'S APPEAL.

*Nik Hashim bin Nik Abdul Rahman* (Deputy Public Prosecutor) for the appellant.

*Mohamed Asfia Awang Nassar* for the respondent.

*Cur. Adv. Vult.*

**Tan Chiaw Thong J.:** In the lower court, the respondent was tried on the following charge: —

"That you, on or about 17th June, 1974 at the Kalaka District Council's office, Saratok, 2nd Division, Sarawak, being an agent of the Kalaka District Council, to wit, the Secretary of the said Council, being employed as such by the Council did knowingly use with intent to deceive your principal, a document, to wit, payment voucher No. 11/6 dated June 17, 1974, in respect of which your principal is interested and which document contains statements which are false in material particulars, in that a sum of dollars one thousand, two hundred and sixty-four and cents nil ($1,264) of air passages had been incurred by yourself, wife and four children for trips from Kuching to Kuala Lumpur and back whereas no such expenses for air passages had been incurred, and which to your knowledge is intended to mislead your principal and that you have thereby committed an offence under section 4(c) of the Prevention of Corruption Act, (Revised — 1971) Act 57, punishable under section 4 thereof."

He was acquitted on the said charge. The appellant has appealed to this court on a number of grounds. The appellant had filed in new grounds of appeal. These were not entertained by the court because of the lateness in filing them, and the learned Deputy Public Prosecutor has not pursued the matter. The appeal therefore proceeded on the original grounds as filed.

In the lower court, it was the case for the appellant that the respondent, as Secretary of the Kalaka District Council, had applied for leave and for free passages to visit Semenanjung Malaysia during his leave. Both were granted to the respondent, but he did not make use of the free passages granted because no air tickets had in fact been bought by him or on his behalf. Hence, in certifying in the payment voucher (Ex. P6) that he had lost all the relevant air tickets issued to him at a cost of $1,264, he had knowingly used Ex. P6 with intent to deceive his principal, the Kalaka District Council in that Ex. P6 contained false material particulars, namely that the said sum had been incurred by him and his family when they had not been so incurred, and this to his knowledge was intended to mislead his principal.

It was the case for the defence that the air tickets had been bought by the respondent through Chop Thong Hwa, a shop in Sarikei dealing in textile and hardware and general goods, which sometimes obtained air tickets on behalf of others from Sin Hua Travel Agent, Sibu. While in the course of making preparations in Kuching to visit Kuala Lumpur with his family, the respondent received news that one of his children was ill and he had to rush back to his house during the course of which he lost the air tickets. Hence, in certifying this in Ex. P6, he was merely certifying a fact, and, the cost of the air tickets having been incurred by him and his family, he had not committed the offence charged against him.

The first two grounds of appeal, which were dealt with together by the learned Deputy Public Prosecutor, read as follows: —

"(a) The judgment of the learned District Court Magistrate cannot be supported and is perverse having regard to the evidence before him.

(b) The learned District Court Magistrate erred in law in acquitting the accused in that all the ingredients constituting the offence charged were proved by the Prosecution and were not challenged or denied by the defence."

It was submitted by the learned Deputy Public Prosecutor that the defence had not created a reasonable doubt in the prosecution's case, and that to hold otherwise would be to go against the weight of the whole of the evidence. Further, that the finding of the learned trial magistrate that all the accused did was to seek reimbursement for the amount spent for the air tickets, that is, $1,264, could not be supported having regard to the evidence, in that on certain material parts of the evidence of PW5, he was not cross-examined, and this amounted to admission of the witness's testimony. Also that the finding of the learned trial magistrate that the lower court could see no way in which PW5 could accept the cheque (Ex. P10) as settlement of the accused's debt, was not explained and could not be reasonable.

There is no doubt that, in the lower court, Cheong Thiam Hoong (PW5) and his brother Chiong Thiam Ming (PW6) were both material prosecution witnesses whose evidence directly implicated the respondent in the offence charged against him. It is also apparent that the payment voucher (Ex. P6), the service order (Ex. P7), the Bill No. 06789 of Chop Thong Hwa (Ex. P8), Chartered Bank Cheque No. 311880 (Ex. P10), and the receipt of Chop Thong Hwa (Ex. P9) were material exhibits and documentary evidence relevant to and connected with the evidence given by PW5 and PW6. PW5 had testified that he received the cheque Ex. P10 from the respondent who told him that it was for goods, whereupon the former issued the receipt Ex. P9 to the latter. Hence, the purpose of Ex. P9 being issued as being in payment of the Bill Ex. P8 was in effect not true as it was not he who wrote the number of Ex. P8 and Ex. P9. PW5 reiterated that the cheque Ex. P10 was to settle the private account of the respondent. PW5 denied any knowledge of Ex. P6, Ex. P7, and Ex. P8; so did PW6. PW5 and PW6 were the persons who managed Chop Thong Hwa at the material times. In cross-examination, PW6 stated that "anything in English is dealt with by my employee". This was referred to in the judgment of the lower court, which, after referring to the evidence of PW5 and PW6, and observing that it was the word of PW5 against that of the accused, concluded that it could see no way in which PW5 could accept the cheque as settlement of the accused's debt. It should be remembered that PW5 had known the respondent for more than 10 years and the latter was a customer of his. PW5 had made certain serious allegations against the respondent the effect of which showed that the respondent had used the cheque Ex. P10 to pay for his goods obtained from the shop of PW5 and not for the purpose indicated in the payment voucher Ex. P6. Further, as already mentioned, PW5 had testified that he had no

knowledge of Exs. P6, P7 and P8. In such circumstances, it was part of the defence that the receipt Ex. P9 was issued in respect of the payment of the air tickets which were ordered by Ex. P7 and billed under Ex. P8; and Ex. P6 was the payment voucher authorising reimbursement to Chop Thong Hwa of the sum of $1,264 the cost of the air tickets. Yet, all these were not put to either PW5 and PW6 in cross-examination. The learned Deputy Public Prosecutor has submitted that failure to do so amounted to an acceptance of the witness's testimony. In *Wong Swee Chin* v. *Public Prosecutor*[1] the Federal Court in its judgment (at page 213) said:

"A correct statement of the law is that failure of the defence to cross-examine the prosecution witnesses on the matter merely goes to the credibility of their testimony.... On this point we need only say there is a general rule that failure to cross-examine a witness on a crucial part of the case will amount to an acceptance of the witness's testimony. But as is common with all general rules there are also exceptions as pointed out in the judgment of the Supreme Court of New Zealand in *Transport Ministry* v. *Garry* where Haslam J. said at page 122:—

'In Phipson on Evidence 11th edition paragraph 1544 the learned authors suggest examples by way of exception to the general principle that failure to cross-examine will amount to an acceptance of the witness' testimony, viz, where

'... the story is itself of an incredible or romancing character, or the abstention arises from mere motives of delicacy... or when counsel indicates that he is merely abstaining for convenience, e.g. to save time. And where several witnesses are called to the same point it is not always necessary to cross-examine them all'."

The evidence in the instant case, however, in my judgment, does not justify the application of any exception to the general rule mentioned in the *Wong Swee Chin's* case. There were other material matters alleged in the evidence of the respondent and forming part of the defence which also contradicted the evidence of PW5 and PW6 which, in my view, should have been put to them in cross-examination but which were not. In such circumstances, how could the learned trial magistrate be in a position to decide on the credibility of these two material witnesses who, it would appear, on the evidence as it stands, had known the respondent for some time and did not seem to have any reason to fabricate or give perjured evidence against the respondent? In the case of *Re Pichi Muthu,*[2] in ordering a retrial of the accused on a charge under section 4(b) of the Prevention of Corruption Act, 1961, Sharma J. in his judgment said:

"The learned president had misdirected himself in ignoring and overlooking the evidence of PW1 and PW2 and the total lack of any cross-examination of these witnesses touching the defence which was subsequently suggested for the first time only when the defence was called."

This case, again, emphasized the need for cross-examining a witness on matters disputed by the defence which form part of the defence. In *Public Prosecutor* v. *Mohd. Isa bin Awang & Anor.*,[3] the learned trial judge stated in his judgment on the matter of cross-examination:

"It is right and proper that the witnesses should be challenged in the witness box, or at any rate that it should be made plain while the witness is in the box that his evidence is not accepted."

This, however, the defence has failed to do so. (See *Re Pichi Muthu, supra; Chua Beow Huat* v. *Public Prosecutor*[4] and *A.E.G. Carapiet* v. *A.Y. Derderian*[5]). In the last-named case, it was held, *inter alia,* that:

"Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. This is not merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. This much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share."

At page 362, in giving the reasons for this decision, Mukharji J. said (at paras. (11) to (13):

"(11) On this point the most important and decisive authority is *Browne* v. *Dunn,* reported in (1893) 6 R. 67. It is a decision of the House of Lords where Lord Herschell, L.C., Lord Halsbury, Lord Morris and Lord Bowen were all unanimous on this particular point. Lord Chancellor Herschell, at page 70 of the report observed:

'Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact, by some questions put in cross-examination showing that the imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses'.

(12) Lord Halsbury, the other member of the House of Lords, at page 76 of the same report said:

'My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to'.

(13) In fact Lord Halsbury described the situation as a 'perfect outrage' at page 77 of the said report."

I had alluded to certain material matters forming part of the defence in respect of which PW5 and PW6 had not been cross-examined. There were others: in his defence, the respondent (at page 19 of the record of proceedings) stated: "Before the tickets were issued I discussed with Chop Thong Hwa.", (at pages 21 and 22), "I explained to Chop Thong Hwa but they insisted that I had to pay ... I had difficulty in convincing Chop Thong Hwa. Attitude of the Co. was that the Council had to pay whether the tickets have lost or not." In the light of the conflicting evidence on material matters in the respective testimonies of PW5, PW6 and the respondent, how could the learned trial magistrate be in a position to properly weigh the evidence of PW5 and PW6 against that of the respondent particularly on such material

matters, as he seemed to have done, as indicated in his judgment (at page 26 of the record) when he stated: "These are the words of PW5 against that of the accused...". In my judgment, this material defect in the judgment of the lower court makes it unsound and is sufficient to cast doubt on its correctness and reliability, and justifies the setting aside of the order of acquittal of the lower court.

Learned counsel for the respondent has submitted that the case of the respondent rests on the contention that (a) the witnesses were heard and seen by the learned trial magistrate, and having done so, he believed the respondent and the other defence witnesses; and (b) gave the benefit of the doubt to the respondent. As to (a), I have already dealt at some length with the substance of this argument. I would add that apart from the respondent, the other defence witnesses were supporting witnesses who, it is obvious, were called to corroborate the testimony of the respondent, and their evidence could not be considered in isolation from the respondent's testimony, which must be considered in the light of the whole of the evidence, not least of all the evidence of PW5 and PW6. The learned trial magistrate in his judgment gave no indication that he disbelieved PW5 and PW6, and he made no finding of fact on the material disputed matters referred to above. Certainly, he compared the respective testimonies of PW5 and PW6, and the respondent and, because "PW6 under cross-examination admitted that anything in English is dealt with by his employees" he found that "This court can see no way in which PW5 can accept the cheque as settlement of the accused's debt." The learned trial magistrate did not say in his judgment that he disbelieved PW5 and PW6. As seems to be the case the basis of this finding was the drawing of inferences from the relevant evidence in the trial. However, for the reasons already given, this basis is not legally sound, and an appellate court can certainly interfere with this finding based on inferences. Even on matters of fact, an appellate court can interfere in appropriate cases, but such cases are not common and an appellate court, before reaching its conclusions upon matters of fact, should and will always give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses (see *Sheo Swarup* v. *King Emperor;*[6] *Public Prosecutor* v. *Ku Lip See*[7] and *Lee Sang Cheah* v. *Rex*[3]).

The learned Deputy Public Prosecutor has also contended that, in finding that the prosecution had failed to prove its case beyond any reasonable doubt, the learned trial magistrate did not state what were his doubts and how they could be reasonable. In answer to this, learned counsel for the respondent has cited the case of *Mat* v. *Public Prosecutor,*[9] where it was held, *inter alia,* that:

"If the court accepts the explanation given by or on behalf of the accused, it must acquit. But this does not entitle the court to convict if it does not believe that explanation, for he is still entitled to an acquittal if the explanation raises a reasonable doubt as to his guilt, as the onus of proving his guilt lies throughout on the prosecution. If upon the whole evidence the court is left in a real state of doubt, the prosecution has failed to satisfy the onus of proof which lies upon it."

In *Public Prosecutor* v. *Sharikat Perusahan Makanan Haiwan Berkerjasama,*[10] it was stated that magistrates

"should state briefly what were the matters they considered (and this involves both law and facts), what was the care they exercised and what was the doubt created in the mind and how it was reasonable. The law requires them to give the grounds of their decision and not an empty or superficial gloss over the decision itself."

In *Chua Beow Huat* v. *Public Prosecutor, supra,* it was stated that a magistrate should discuss the evidence and the probabilities arising from the circumstances of the case. The reasons for his findings should be stated. The grounds should indicate that he had in fact applied his mind to the evidence produced in the case. Here, I find that the learned trial magistrate had not adequately done that in his judgment, rendering it defective.

The third ground of appeal complains that the learned trial magistrate erred in law because he refused, without giving valid reasons, the request of the prosecuting Deputy Public Prosecutor to recall the accused for further cross-examination, relating to a few questions which the prosecution had forgotten. I find there is no merit on this ground and intimated to learned counsel for the respondent that it was unnecessary for him to answer the ground put forward. The record shows that the Deputy Public Prosecutor made no mention as to the nature of the questions he wished to put to the respondent. If this is not known, it is not possible for an appellate court to say that the lower court had wrongly exercised its discretion in refusing the request.

The last ground of appeal states: "The learned District Court Magistrate erred in law contrary to the provision of section 174(iii) of the Criminal Procedure Code (F.M.S. Cap. 6) in failing to give the prosecution at the close of the defence case an opportunity of addressing the court." In this connection, section 174(iii) of the Criminal Procedure Code provides: "The officer conducting the prosecution shall have the right of reply on the whole case when the accused has adduced evidence." It was contended by the learned Deputy Public Prosecutor that a duty was imposed upon the trial court by this provision. In my opinion, there is no less a duty imposed upon counsel before the court to claim such a right if he wishes to exercise it. There is nothing in the record that that has been done. Further, it is the duty of counsel to assist the court in respect of relevant matters. In my view, if prosecuting counsel gives no indication to the trial court that he wishes to exercise his right of having the last word, it would not be unreasonable for the trial court to assume that he does not wish to exercise such right. Further, the record shows that learned counsel for the respondent also did not exercise his right to sum up the case for the respondent. I find that this ground fails. Even if what occurred in this connection may be regarded as an error, omission or irregularity within the meaning of section 422

of the Criminal Procedure Code, I find that such error, omission or irregularity has not occasioned a failure of justice.

In the premises, the judgment of the lower court cannot be allowed to stand. The learned Deputy Public Prosecutor has urged upon me to adopt a certain course of action in case the appeal is allowed, but for the reasons given on the first two grounds of appeal, it is obvious that this suggested course of action would be inappropriate in the circumstances.

For the reasons given, the appeal is allowed and the order of acquittal of the lower court is set aside. The respondent is ordered to be retried on the same charge before another magistrate. Pending the retrial, he may be released on bail in the sum of $5,000 with one surety in the same sum.

*Appeal allowed;*

*Order for retrial.*

Solicitors: *Nassar & Co.*

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## ABDULLAH BIN SAMAN v. MINAH BINTE IBRAHIM

**[A.C.J. (Mohamed Zahir J.) July 18 & October 28, 1981]**

**[Kota Bharu — Civil Appeal No. 17 of 1976]**

*Land Law — Small Estate — Dispute — Direction by Collector to institute proceedings in court — Direction to be given to all parties interested — Small Estates (Distribution) Act, 1955, s. 14(4) (5) & (6).*

In this case the respondent alleged that one Salleh bin Mamat, since deceased, during his lifetime sold 1/4 share in his land at Mukim Ganong to her. The deceased left two beneficiaries, his widow and the appellant, his nephew. The appellant disputed the sale to the respondent. At the hearing before the Collector, the Collector issued letters of administration to the appellant and Form O to the respondent so that the respondent would be able to sue the appellant in the High Court for specific performance. The respondent however did not institute proceedings in the High Court. The Collector thereupon proceeded to hear the dispute and he gave judgment in favour of the respondent. The appellant appealed and it was submitted that as Form O was only issued to the respondent, the appellant was deprived of the right to bring the matter to the High Court.

**Held:** as section 14(5) of the Small Estates (Distribution) Act, 1955, requires the Collector to direct all parties to the dispute to institute proceedings in the Court, and as in this case Form O was not issued to the appellant, the order of the Collector must be set aside and the Collector be directed to issue Form O to both the parties.

CIVIL APPEAL.

*Datuk Wan Mustapha* for the appellant.

*Yusof Haji Mohamed Nor* for the respondent.

**Mohamed Zahir J.:** The appellant is appealing against the decision of the Collector, Bachok, given under the Small Estates (Distribution) Act 1955. The facts of the case are as follows. The respondent alleged that one Salleh bin Mamat, since deceased, during his life time sold his land held in Lot No. 510 Mukim Gunong to her to the extent of ¾th shares and to one Mohamad Nor bin Omar to the extent of ¼th share under two separate agreements in writing. The deceased left two beneficiaries: one widow, Mek binti Awang Kechik and the appellant who is a nephew of the deceased. According to the Kathi's faraid, the widow is entitled to ¼th and appellant ¾th shares in the estate. The sale to Mohamad Nor was not disputed by the parties. The appellant is only disputing the sale to the respondent who is the deceased's step-daughter and daughter of the widow, Mek.

The matter first came up for hearing before the Collector on February 12, 1975 and on finding that there was a collateral dispute he issued the letters of administration to the appellant and Form O to the respondent so that the respondent would be able to sue the appellant in the High Court for specific performance. He failed to issue Form O to the appellant.

The respondent, however, did not institute her claim in the High Court on the ground that she was unable to do so. It is not known whether it was on financial reason or for other reasons. The Collector then proceeded to hear the dispute under section 14(4) of the Act and gave judgment in favour of the respondent.

The question is whether the respondent after being given the opportunity to bring the matter into court over an immovable property can refuse to do so or whether such respondent shall have the option whether to institute the suit or not. It appears from the clear wordings of section 14(5) of the Act, the respondent has such a choice. The relevant part of section 14(5) reads as follows:—

"... the Collector shall direct the persons claiming any beneficial right or interest in the property within two months of the date of the direction to institute proceedings in a court with a view to the determination of the dispute by the court and if no such proceedings are instituted within the period the Collector shall proceed to hear and determine the dispute in the same manner as a dispute referred to in subsection (4)."

The appellant's counsel submitted that since Form O was issued to only the respondent, the appellant was deprived of any right to bring the matter into court. Upon reading section 14(5), it appears to be abundantly clear that it is intended that if the beneficial right or interest is in dispute between two or more claimants then the Collector shall direct the persons claiming any beneficial interest in the property to institute proceedings in a court. It appears to include every claimant to such right or interest. It follows therefore the right to institute such proceedings in a court should be given to every such claimant. If none of them institutes such claim, then only the Collector can exercise his powers to proceed to hear the dispute.

Section 14(6) is even clearer in determining that it is incumbent on the Collector to direct the parties to the dispute to initiate proceedings in a court. These words were used:

"... the Collector shall direct the parties to the dispute within two months of the date of the direction to institute proceedings in a court of competent jurisdiction. ..."

In section 14(5) the words "persons claiming any beneficial right or interest" are used, whereas in section 14(6) "the parties to the dispute" are used. It is evidently clear that all parties to the dispute should be issued with Form O. Even under the rules